

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

United States of America,

Plaintiff,

vs.

Case #2:14CR21

Allen J. Pendergrass,

Judge George Smith

Defendant.

SUPPLEMENTAL SENTENCING MEMORANDUM

Now comes the defendant, Allen J. Pendergrass, through his attorney, Terry K. Sherman, and submits this supplement to his Sentencing Memorandum, filed on June 9, 2015.

On April 9, 2015, the U.S. Sentencing Commission voted to fundamentally fix some portions of the U.S. Sentencing Guidelines. These fixes will become final on November 1, 2015, if Congress does not act to the contrary. With 700 plus amendments to the guidelines, Congress has only vetoed the Commission's actions a few times, and those generally had to do with drug amendments.

THE NEW NUMBER-OF-VICTIMS TABLE:

The Commission has changed and added numbers to the number-of-victims table. Under the amendment, the Commission has expanded the enhancement by adding an element of "substantial financial hardship." Under the proposed amendment to U.S.S.G. §2B1.1(b) states as follows:

"(2) (Apply the greatest) If the offense ---

- (A) (I) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) or resulted in substantial financial hardship to one or more victims, increase by 2 levels;
- (B) resulted in substantial financial hardship to five or more victims, increase by 4 levels; or
- (C) resulted in substantial financial hardship to 25 or more victims, increase by 6 levels."

Accordingly, if the proposed amendment to the number-of-victims table was to be applied, Defendant Pendergrass would receive a 2 level enhancement as opposed to 4, unless

the government demonstrates "substantial financial hardship" to 5 or more victims. For the reasons stated in defendant's initial objections, he believes no one other than The Huntington Bank suffered any financial hardship.

If the Court was to apply the amendments to the number-of-victims table, and deny defendant's objection to the enhancement contained in Paragraph 30 of the PSI Report, Mr. Pendergrass's base offense level would be increased by 2, as opposed to 4. Under these calculations, defendant's base offense level, including acceptance of responsibility would be 20, criminal history 1, with a sentencing range of 33 to 41 months.

Respectfully submitted,

s/Terry K. Sherman, #0002417  
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2015, I electronically filed the following with the Clerk of the Court, using the CM/ECF System, which will send notification of such filing to the following: David Bosley, Assistant U. S. Attorney; and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: n/a.

s/Terry K. Sherman, #0002417  
Attorney for Defendant  
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